**UNITED STATES OF AMERICA**
**BEFORE THE NATIONAL LABOR RELATIONS BOARD**
**SUBREGION 24**

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| **UNION DE TRABAJADORES DE MUELLES, LOCAL 1740, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO (SSA SAN JUA, INC.)** | Case 12-CB-210091<br>Case 12-CB-22003<br>Case 12-CB-220487<br>Case 12-CB-221955 |
| and | |
| **LUIS M. MONTES PEREZ, AN INDIVIDUAL** | |

**MOTION REGARDING RESPOSABILITY OF SSA SAN JUAN TO THE CHARGING PARTY**

Respondent Unión de Trabajadores de Empleados de Muelles, Local 1740, International Longshoremen's Association, AFL-CIO (hereinafter Respondent Union) through their undersigned attorneys, respectfully says as follows:

1. SSA San Juan Inc. is the employer of Luis M. Perez Montes, Luis Dávila and Angel García. The employer has recognized the charged party, Union de Trabajadores de Muelles, ILA 1740 as the exclusive collective-bargaining representative of the employees of the appropriate unit.[1] Perez, Montes and Davila are part of such appropriate unit.
2. The employer and the ILA 1740 has subscribed a collective bargain agreement (hereinafter CBA) which

[1] According to the article I of the Collective Bargaining Agreement between SSA San Juan Inc. and ILA 1740, the appropriate unit is includes "all which operators, signalmen, stevedores, plank men, drivers, car attendants, hatchtenders, boss foreman, motorist (including operators of all types of motorized equipment such as ground cranes, fingerlifts, top loaders and/or any other similar type of motorized equipment) and water carriers who work at the San Juan port; excluding supervisors, managers, administrative personnel, clerks, professional employees, confidential employees and security employees.

is full force since June 23, 2016 until September 30, 2019.

3. The Article II of the CBA establish a union-security agreement between the ILA 1740 and SSA San Juan. In summary, as a condition of employment, all employees in a bargaining unit become union members and begin paying union dues and fees within 31 days of being hired.[2].
4. As part of our preparation for the January 15, 2019 hearing, we obtain information in relation of the SSA San Juan knowledge of the alleged discharge of the employees Montes, Davila and Garcia. We believe that during the investigation of the charges made by the NLRB, this information must have been discussed with the witnesses and/or the charging parties or is part of the evidence discovered during the investigation. Moreover, we understand that SSA Juan Inc. had knowledge of the disciplinary proceedings against Montes, Dávila and García.
5. On the other hand, if we assumed that the allegations made by the NLRB in the consolidated complaint are true, it is reasonable to believe that the employer knew about the alleged discharge or dismissal of the charging party. If they were regularly called or referred to work, the employer never asked or investigate why, since or about march 31, 2017 Montes, Davila and García were not referred anymore to work at the SSA San Juan port?
6. SSA San Juan Inc, as employer, has a duty of care under the Act, a duty of care which forbids employers from discharging an employee if they have reasonable grounds for believing that membership was denied for reasons other than the failure to tender dues and fees (second proviso to section 8 (a) (3)).
7. Again, if we assume that the allegations of the General Counsel are true, then, SSA San Juan, Inc. has

[2] The article II of the CBA reads as follows: "Affiliation to the Union shall be a condition of employment on or after the thirty-first day following the commencement of such employment, as long as the employer has no reasonable basis to believe: (1) that such affiliation was not available to the employee on the same terms and conditions generally applicable to other members; and (2) that affiliation to the Union was not refused or terminated for reasons other than the failure of the employee to tender periodic dues or initiation fees uniformly required as a condition for acquiring or retaining membership in the Union. In Spanish the CBA Article read as: *"El afiliarse a la Unión será una condición de empleo en o después del trigésimo primer día siguiente al comienzo de tal empleo, siempre y cuando que el patrono no tenga base razonable para creer: (1) que tal afiliación no estaba disponible para el empleado en los mismos términos y condiciones generalmente aplicables a otros miembros y (2) que la afiliación a la Unión no fue rehusada o terminada por otras razones que no fueran la falta por el empleado de ofrecer el pago de las cuotas periódicas o las cuotas de iniciación uniformemente requeridas como condición para adquirir o retener la afiliación a la Unión".*

reasonable grounds to believe that the alleged discharge of Montes, Garcia and Davila was requested for reasons other than the employee's failure to make the requisite dues and initiation fees tender. Where the employer is aware of facts that would lead to believe that the discharge may be for an improper purpose has that duty of inquiry. As far as we know, SSA San Juan failed in that duty.

8. Furthermore, in the light of the allegations stated in this motion, the employer is an indispensable party to this action. If the allegations of the General Counsel are true, a complete judgement and/or remedy cannot be rendered without them.

9. SSA San Juan, as employer, has to be included as a charged party or respondent in this consolidated complaint. The NLRB can't make a final judgment or order that concludes all the controversies without making a determination about the responsibility of the employer to the charging party.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 3rd day of January 2019.

I CERTIFY that on this same date I electronically filed the foregoing with the NLRB system which will send a notification to the charging parties, at his electronic address of record.

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**/s/MARDELIS JUSINO ORTIZ**
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